

Decision 15-03-038 March 26, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Add Speech Generating Devices to the Deaf and Disabled Telecommunications Program.

Rulemaking 13-03-008
(Filed March 21, 2013)

DECISION GRANTING COMPENSATION TO THE CENTER FOR ACCESSIBLE TECHNOLOGY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 13-12-054

Claimant: Center for Accessible Technology (CforAT)	For contribution to Decision (D.) D.13-12-054
Claimed: \$55,900.43	Awarded: \$56,247.93
Assigned Commissioner: Catherine J.K. Sandoval	Assigned ALJ: Seaneen M. Wilson

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision approves new rules and processes for the Deaf and Disabled Telecommunications Program (DDTP) to add speech generating devices (SGDs) that qualify as durable medical equipment to the program, and modifies existing rules to allow SGDs that are not durable medical equipment to be distributed through the existing program.
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B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	None	Verified
2. Other Specified Date for NOI:	6/9/13 (30 days after due date for filing of reply comments, per Rule 17.1(a)(2) of the Commission's Rules of Practice & Procedure)	Verified

3. Date NOI Filed:	5/28/13	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.13-03-008	Verified
6. Date of ALJ ruling:	6/14/13	Verified
7. Based on another CPUC determination (specify):	N/A	
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.13-03-008	Verified
10. Date of ALJ ruling:	6/14/13	Verified
11. Based on another CPUC determination (specify):	N/A	
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-12-054	Verified
14. Date of Issuance of Final Order or Decision:	12/23/13	Verified
15. File date of compensation request:		1/28/2014
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contributions	CPUC Discussion
1. CforAT advocated for differing treatment of SGDs that meet the definition of durable medical equipment (DME) and SGDs that do not meet this definition, most notably tablet computers with SGD apps. In particular, CforAT advocated that:	The final decision generally determined that new rules were only needed for DME SGDs and that non-DME SGDs could be provided through the existing CTAP program. While the expanded program is structured slightly differently than was advocated by CforAT, the final decision treats the two types of devices separately, and adopts the vast majority of CforAT’s positions and policy statement regarding distribution of SGDs.	Verified

<ul style="list-style-type: none"> • Processes for obtaining non-DME SGDs should be simpler than those for obtaining DME SGDs; • Non-DME SGDs should be available without an individualized recommendation from a speech-language pathologist (SLP); • Non-DME SGDs should be available through a lending program, comparable to the existing equipment program; • DDTP should continue to operate on an independent living model as it expands to include SGDs; • Any person with a speech disability who chooses to consult with an SLP should be able to do so, and should be able to obtain recommended equipment through DDTP with appropriate cost-sharing. 	<ul style="list-style-type: none"> • Decision at pp. 9-10 (summarizing CforAT’s position re: “certification”); FOF 9; Ordering Paragraphs 1-2. • Decision at pp. 9-10 (summarizing CforAT’s position re: “certification”); Ordering Paragraph 2. • Decision at p. 9, subsection 1.d re: “type and cost of SGD” summarizing CforAT’s position; Ordering Paragraph 2. • Decision at p. 17; FOF 9. • Final Decision at p. 18 (summarizing CforAT’s support for important work done by SLPs); FOF 9, 19; Ordering Paragraph 1. 	
<p>2. CforAT participated actively in the Working Group established to assist the Commission in expanding DDTP to include SGDs.</p>	<p>The concept of a Working Group was set forth in the OIR as a way to provide a low-cost and streamlined way to gather key input from interested parties. Per the instructions in the OIR, CforAT submitted a letter of interest on 4/9/13, and was included in the group per an emailed ruling by the assigned ALJ, issued on 4/24/13. CforAT’s representative actively participated in all Working Group meetings and submitted comments on the final Working Group Report (filed on 8/8/13).</p>	<p>Verified</p>

<p>3. CforAT recommended that the Commission provide guidance to streamline the addition of non-DME SGDs to the existing equipment program through DDTP.</p>	<p><i>See</i> CforAT’s Comments on Proposed Decision, filed on 11/25/13. While the final decision does not specifically adopt the guidance suggested by CforAT, it authorizes the issues raised by CforAT’s recommendations to be explored in a second phase of this proceeding, specifically stating that this is intended to “expand on CforAT’s proposal to request advice from experts regarding speech generating applications,” and noting that “the second phase of this proceeding will consider whether the Commission staff should request guidance from SLPs and other experts regarding equipment and applications provided by the SGD distribution program.” Final Decision at p. 37, <i>see also id.</i> at p. 39; Ordering Paragraphs 6-7.</p>	<p>Verified</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹</p>	<p>Yes</p>	<p>Verified</p>
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	<p>To a modest extent</p>	<p>Verified, however no duplication issue(s) arose.</p>
<p>c. If so, provide name of other parties: ORA, Jen Coggiola</p>	<p>Verified</p>	
<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>ORA took a limited role in this proceeding; CforAT was more active on the majority of issues. Nevertheless, CforAT consulted with ORA to coordinate where reasonable and to avoid duplication of effort.</p> <p>Ms. Coggiola was extremely valuable in the proceeding for bringing the perspective of a Speech Language Pathologist to the table, but she had no</p>	<p>Verified</p>	

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>experience in Commission proceedings. CforAT sought to assist Ms. Coggioloa on procedural matters and to coordinate with her on substantive issues as appropriate.</p> <p>Overall, CforAT was one of the two most active parties in the proceeding; the other was the Assistive Technologies Law Center (ATLC), with which CforAT disagreed on most issues that were the focus of the Working Group and substantive comments. While CforAT and ATLC share common goals in concept, most notably wanting to effectively expand the availability of SGDs to consumers who need them, the organizational positions on the best way to move forward toward this goal differed substantially, and formed the bulk of the record in the proceeding.</p>	
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

<p>a. Intervenor’s claim of cost reasonableness:</p> <p>This entire proceeding was opened in order to provide a benefit to people who are constituents of CforAT, namely people who need speech generating devices in order to access telecommunications. All of CforAT’s work was intended to assist in developing an effective and efficient program by which to serve these customers. On a financial basis, each customer who is served by the program will benefit based on the value of the SGD which he or she receives (or the portion of such value which the customer would otherwise have been required to pay out of pocket). The dollar values for each customer served can be substantial, but the even greater value, as widely acknowledged in the proceeding, is in providing an individual who was previously unable to communicate effectively with access to assistive technology that allows them to communicate through speech, as focused on access to the telecommunications network.</p> <p>Because CforAT’s overall number of hours were reasonable and the proceeding was staffed and managed efficiently, as described in detail below, a review of either the financial value to customers who need SGDs or the non-dollar benefits obtained by the same customers would separately bear a reasonable relationship with the reasonable costs incurred. Together, the value obtained by customers who will be able to efficiently access appropriate SGDs substantially exceeds the amount of compensation requested. However, no individual customer would be likely to have the resources or expertise to participate on his or her own behalf.</p>	<p>CPUC Verified</p> <hr/> <p>Verified</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>In our initial NOI, filed on May 28, 2013, CforAT estimated that it would spend approximately 165 hours in this proceeding, including 100 hours by Dmitri Belser and 65 hours by Melissa Kasnitz. We estimated that the vast majority of the time (70%) would be spent working with the Working Group.</p> <p>In fact, as described in greater detail below, somewhat less time was spent on working group issues and more was spent on other issues, though the overall total of time spent was very close to the estimates (69.5 hours by Mr. Belser and 78.6</p>	<p>Verified</p>

<p>hours by Ms. Kasnitz, as well as 15 hours by CforAT’s Assistive Technology Specialist, Jen McDonald-Peltier, for a total of 163.1 hours).</p> <p>CforAT’s Executive Director, Dmitri Belser, who has substantial expertise in telecommunications services for people with disabilities, but who bills at lower rates than CforAT’s counsel, served on the Working Group, and the majority of his time was allocated to this work, though he also gave important input to all expansion issues. Legal Counsel, Melissa Kasnitz, supported the efforts involved in participation with the Working Group and was primarily responsible for addressing all other matters in the proceeding; Ms. Kasnitz also attended a single Working Group meeting when Mr. Belser was unavailable. Additionally, as noted above, CforAT’s compensation request includes time spent by Jen McDonald-Peltier, who works for CforAT as an Assistive Technology Specialist. Ms. McDonald-Peltier’s credentials are set forth below in support of her proposed rate. Upon invitation, she attended a single meeting of the Working Group where she made a presentation regarding various forms of assistive technology and then provided written material consistent with her presentation for inclusion in a Working Group Report.</p> <p>Overall, the time spent by CforAT was reasonable in that it was allocated to effectively participate in the Working Group and to respond to other issues as they arose. Primarily, CforAT expended a greater portion of its time than anticipated at the time the NOI was filed on issues regarding program expansion, because the question of the proper mechanism for including non-DME SGDs and the proper role for SLPs in the program were subject to substantial dispute.</p>	
<p>c. Allocation of Hours by Issue</p> <p>As noted above, in our NOI, CforAT estimated that its time would be spent primarily (70%) on participation in the Working Group, with the remaining time spent on issues regarding program expansion (20%) and general participation (10%).</p> <p>CforAT continued to use these issues in its time records to identify how time was spent. However, because certain key issues regarding program expansion were more hotly disputed than was anticipated when the NOI was filed, a greater portion of time was spent on program expansion issues. While not separately broken out in the time records, CforAT estimates that the time allocated to issues regarding program expansion includes the following sub-issues:</p> <ul style="list-style-type: none"> • Addressing DME versus non-DME SGDs; • Addressing the role and availability of SLPs; • Addressing program efficiency; • Addressing cost/budget issues. <p>Similarly, more time was spent by counsel than anticipated, but less was spent on the Working Group; overall, the total hours recorded were very close to the hours estimated.</p> <p>The majority of Dmitri Belser’s time (44.5 of 69.5 hours, or 64%) and 100% of</p>	

<p>Jen McDonald-Peltier's time was spent on Working Group issues. Melissa Kasnitz' time was spent as follows:</p> <p>Working Group: 23% (17.9 of 78.6 hours) Expansion Issues: 63% (49.7 of 78.6 hours) General Participation: 14% (11.0 of 78.6 hours)</p> <p>The remainder of Dmitri Belser's time was spent on Expansion Issues (17 of 69.5 hours, or 24.5%) and General Participation (8 of 69.5 hours, or 11.5%).</p>	
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Melissa W. Kasnitz	2013	78.6	\$440	D.13-11-017	\$ 34,584.00	78.6	\$440	\$34,584.00
Dmitri Belser	2013	69.5	\$225	D.13-02-014 (Requested 2013 rate is unchanged from approved rate in 2012)	\$ 15,637.50	69.50	\$230 ²	\$15,985.00
Jennifer McDonald-Peltier	2013	15	\$185	See below.	\$2,775.00	15	\$185	\$2,775.00
Subtotal: \$ 52,996.50						Subtotal: \$53,344.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Melissa W. Kasnitz	2013	12.70	\$220	½ 2013 Rate (see comment below)	\$2,794.00	12.70	\$220	\$2,794.00
Subtotal: \$2,794.00						Subtotal: \$2,794.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Print/Copy	Print hard copies of selected documents at office of DREDF (\$0.25/page)			\$21.25	\$21.25		
	Postage	Mail hard copies of filed documents to ALJ and Assigned Commissioner's Office			\$28.88	\$28.88		

² Application of 2.0% Cost-of-Living-Adjustment (COLA) for 2013 (*Resolution ALJ-287*).

Travel	Travel to Working Group Meetings and other in-person events	\$59.80	\$59.80
Subtotal: \$109.93			Subtotal: \$109.93
TOTAL REQUEST: \$55,900.43			TOTAL AWARD: \$56,247.93
.ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Melissa W. Kasnitz	1992	162679	No; please note from January 1, 1993 until January 25, 1995 and January 1, 1996 until January 19, 1997, Kasnitz was an inactive member of the California Bar.

C. Attachments Documenting Specific Claim and Comments on Part III

Attachment or Comment #	Description/Comment
1 (Attachment)	Certificate of Service
2 (Attachment)	2013 Merits Time – Kasnitz
3 (Attachment)	2013 Merits Time – Belser
4 (Attachment)	2013 Merits Time – McDonald-Peltier
5 (Attachment)	Compensation Time
6 (Attachment)	Costs
7 (Comment)	<p>Justification for McDonald-Peltier Rate:</p> <p>Jennifer McDonald-Peltier is a RESNA certified Assistive Technology Professional, with a single subject teaching credential and a Master’s Degree in Special Education. Ms. McDonald-Peltier has been an Assistive Technology Specialist for 14 years, in which time she has worked with numerous clients of all ages (from children to seniors) with complex communication needs. In this role, she has helped identify appropriate communication assistance tools for individuals, ranging from low-tech picture boards to high-tech speech generating devices (SGDs) to achieve communication, education, vocation, and community integration needs. Once identified, she assists client in using these tools. Ms. McDonald Peltier also has experience with use of consumer devices as assistive technology; she implemented an ongoing iPad loan program for consumers and professionals to learn about and trial the iPad as a communication tool.</p>

³ This information may be obtained at: <http://www.calbar.ca.gov/>.

	Ms. McDonald-Peltier has not previously had a rate established at the California Public Utilities Commission. The rate requested, \$185 per hour, represents the standard consulting rate charged by CforAT for professional services. This rate is at the low end of the Commission’s approved rate range for experts with 13+ years of service in 2013, as set out in Resolution ALJ-287, issued on April 29, 2013 (approving rate range for experts with 13+ years of experience from \$165-410 per hour).
8 (Comment)	Rate for Compensation Time: While most work on this compensation request took place in 2014, CforAT is seeking compensation for such time ½ of its 2013 rates, as all work on the merits took place in 2013. CforAT reserves the right to seek to adjust its rates in 2014 in keeping with any guidance the Commission may issue.

D. CPUC Disallowances and Adjustments:

Item	Reason
1. Hourly Rate for Jennifer McDonald-Peltier.	CforAT requests the hourly rate of \$185 per hour for work McDonald-Peltier completed in this proceeding in 2013. After reviewing McDonald-Peltier’s credentials, in a resume provided via email, we find this rate to be reflective of McDonald-Peltier’s experience. Specifically, McDonald-Peltier has a Bachelor’s in East Asian Languages, a Master’s in Special Education, and 2 certificates in Assistive Technology. McDonald-Peltier’s education background coupled with her more than 14 years of working for CforAT places her in the tier of experts/advocates with 13-plus years of experience per Resolution ALJ-287. As such, the Commission adopts the rate of \$185 per hour for McDonald-Peltier for 2013.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?	Yes

FINDINGS OF FACT

1. Center for Accessible Technology has made a substantial contribution to Decision13-12-054.
2. The requested hourly rates for Center for Accessible Technology’s representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$56,247.93.
5. This rulemaking is a quasi-legislative proceeding with no named respondents. The proceeding broadly impacts communications utilities as well as non-utility communications service providers.

CONCLUSIONS OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.
2. The claim should be paid from the Intervenor Compensation Fund.
3. Comments on today's decision should be waived and the decision should be made effective immediately.

ORDER

1. Center for Accessible Technology is awarded \$56,247.93.
2. Within 30 days of the effective date of this decision, the Commission's Fiscal Office shall disburse the awarded compensation from the Commission's Intervenor Compensation Fund. Payment of the award shall include compound interest at the rate earned on prime, three-month, non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 13, 2014, the 75th day after the filing of Center for Accessible Technology's request and continuing until full payment is made.

This decision is effective today.

Dated March 26, 2015, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1503038	Modifies Decision?	No
Contribution Decision(s):	D1312054		
Proceeding(s):	R1303008		
Author:	ALJ Wilson		
Payer(s):	Commission's Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Center for Accessible Technology (CforAT)	1/28/2014	\$55,900.43	\$56,247.93	N/A	Change in hourly rate, per Resolution ALJ-287.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Melissa	Kasnitz	Attorney	CforAT	\$440	2013	\$440
Dmitri	Belser	Expert	CforAT	\$225	2013	\$230
Jennifer	McDonald-Peltier	Expert/Advocate	CforAT	\$185	2013	\$185

(END OF APPENDIX)